

NO. 5:18-CR-37-H

V.

Defendant.

This matter is before the court on defendant's motion for the court to appoint counsel and to reconsider his judgment based on the case of Rehaif v. United States, 139 S.Ct. 2191 (June 21, 2019). Though not so labeled, it is clear that defendant's motion is more appropriately construed as an attempt to file a motion pursuant to 28 U.S.C. §2255.

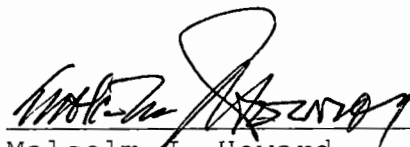
Therefore, pursuant to United States v. Emmanuel, 288 F.3d 644, 649 (4th Cir. 2002), this court hereby provides defendant with notice of the court's intent to recharacterize his motion to modify his term of imprisonment as one brought pursuant to 28 U.S.C. §2255. As required by Emmanuel, the court directs defendant's attention to the language of §2255 in which the following issues are addressed: (1) the restrictions on second or successive motions, (2) the one year limitations period, and (3)

the four dates used in determining the start of the limitations period.

The defendant shall have thirty (30) days from the date of entry of this order to respond to the court's proposed recharacterization. If defendant responds within the time set by the court, but does not agree with the motion's recharacterization, the court shall rule on the merits of the motion as filed. However, if the defendant either timely agrees to the recharacterization or fails to respond in opposition thereto, the court shall recharacterize the motion at issue as one under 28 U.S.C. §2255. The newly recharacterized motion shall be deemed filed as of the date of the original motion.

Furthermore, for good cause shown, the court directs the federal public defender to appoint counsel in this matter. The clerk is directed to serve a copy of this order on the Office of the Federal Public Defender.

This 17th day of December 2019.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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